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OFFICE OF PETITIONS

In re Reissue Application of :
Peter J. Schmitt, et al. :
Reissue Application No.: 09/464,610 :
Filed: December 15, 1999 :
Original Patent No. 5,697,970 :
Issue Date: December 16, 1997 :
For: THINLY WOVEN FLEXIBLE GRAFT :
:

ON PETITION

This is a decision on the petition filed July 30, 2001, under 37 CFR 1.47(a), which is being treated as a petition under 37 CFR 1.183, requesting waiver of 37 CFR 1.67 and 1.172, which would require that the supplemental reissue declaration required by the Office action of December 18, 2000 be executed by the inventor.¹

The petition is **GRANTED**.

While the first named inventor, Mr. Peter Schmitt, refuses to sign the supplemental declaration, the inventor nevertheless had assigned his entire right, title and interest in the above-captioned patent to Meadox Medicals, Inc. as recorded in the records of the USPTO. As such, Meadox Medicals, Inc., as the successor in title to Mr. Schmitt and Mr. Nunez, is the patentee.

An assignment of the entire right, title and interest, passes both legal and equitable title. See, Wende v. Horine, 191 F. 620, 621 (C.C.N.D. ILL. 1911). An assignment of the patent carries to

¹ Rule 47 only applies where, in the first instance, the signature of an originally named, or to be added, inventor cannot be obtained. As Schmitt executed the original declaration and thus made the application, 37 CFR 1.47 no longer applies to this case. See 37 CFR 1.47; MPEP 201.03. Rather, the remedy lies under 37 CFR 1.183 when a required supplemental declaration is not executed in whole or in part by a previously signing inventor(s). See MPEP 603.

the reissue application. See MPEP 201.12. The named inventors, as the assignor of their entire interest, could not insist that the reissue application be prosecuted by Meadox Medicals, Inc.; Meadox Medicals, Inc. is free to deal with the patent and this reissue application as it wills. See Garfield v. Western Electric Co., 298 F. 659 (S.D.N.Y. 1924). For the reasons noted above, under the circumstances of this reissue application, waiver of the rules and acceptance of the reissue declaration filed July 30, 2001, executed on behalf of Meadox Medicals, Inc. is appropriate. See In re Hayes, 53 USPQ2d 1222 (Comm'r Pat. 1999). This decision also extends to any forthcoming reissue declaration(s) executed on behalf of Meadox Medicals, Inc. the true party in interest.

This reissue application is being forwarded to Technology Center AU 3738.

Telephone inquiries related to this decision should be directed to Marianne Morgan at (703) 306-3475 or in her absence, please call the undersigned at (703) 305-1820.


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